IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Writ Petition No. 777 of 2001.

Judgment reserved on : 4th July, 2007.

Date of Decision: 31st July, 2007.

Kalpana Khatu ***…..Petitioner***

Vs.

Canara Bank and others ***…..Respondent***

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Sandeep Kaushik, Advocate.

For the Respondents: Mr. Bhupinder Gupta, Sr. Advocate, with Ms. Jyotika Gupta, Advocate, for respondent Nos. 1 and 2.

Dev Darshan Sud, Judge.

The petitioner, who is an employee with the Canara Bank, has approached this Court under Article 226 of the Constitution of India with a prayer that Annexure P-6 which are the proceedings before the Disciplinary Authority, Annexure P-7, the order passed by the Deputy General Manager, imposing punishment of reduction to a lower stage in the scale of pay by one stage for a period of one year without cumulative

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

effect and the order passed in appeal Annexure P-9, dismissing the appeal preferred by the petitioner, be quashed and set aside.

Brief facts, necessary for consideration are that the petitioner, while working as a clerk in the Canara Bank, Shimla Branch, was charge sheeted on the allegations that on 11.11.1999 when she was entrusted with the duties as a Cashier in the Branch, she made unwarranted/derogatory remarks against the complainant Shri Raju Lakara, who was also working as a clerk in the Bank. The imputation was that she has used the words "***Sabhi scheduled caste aise he hote hai kaya?"*** The charge sheet states that by this act she has hurt the sentiments and feelings of a fellow employee and flouted the discipline of the Bank. She was also accused of disorderly behaviour and charged that she had committed misconduct within the meaning of Chapter XI Regulation (3) (k) of the Canara Bank Service Code. The charge sheet further states:-

> "By your above said acts you have committed a Gross Misconduct within the meaning of Chapter XI, Regulation 3 (k) of Canara Bank Service Code. Your above acts being prejudicial to the interests of the Bank, you have committed a Gross Misconduct within the meaning of Chapter XI, Regulation 3 (m) of Canara Bank Service Code."

The two clauses under which the petitioner was charged are:-

> "**Gross Misconduct**" means any of the following acts or omission on the part of an employee;
>
> (a) to (j)----------
>
> (k) Drunkenness or riotous or disorderly or indecent behaviour in the premises of the Bank;

(l)……

(m) Doing any act which is prejudicial to the interest of the Bank;"

A detailed reply Annexure P-3 was filed by the petitioner to the charges leveled against her raising a number of objections. According to her, on the day of incident at around 12 noon, the complainant Raju Lakara had approached her for the exchange of soiled currency notes, which she had exchanged. Immediately thereafter he again approached her with some other soiled currency notes which he wanted to exchange. The petitioner was, perhaps irritated and told him not to bother her time and again. On this, the complainant flared up and he argued with her loudly and used unparliamentary and derogatory words against her in front of the customers present in the Bank. According to her, one Mr. Shyam Khanna, amongst others, who was the Managing Partner of M/s Shimla Watch Company, Shimla was also present at the relevant time. The gist of her reply was that although the complainant had shouted at her and addressed her in a language which could not be used against a women, such words were addressed to her in front of the customers and the staff and no action was taken against the complainant. She also submitted that there were other customers, namely, Mr. Ashok Khanna and Mr. Shyam Khanna and one another person. Mr. Ashok Khanna was not allowed to be examined in her defence. The Enquiry Officer submitted his findings vide Annexure P-4 which report is dated 7.3.2000. After considering the evidence, he holds that the words attributed to the petitioner were used by her. He also holds that in Ext. DEX-1 submitted by the petitioner, she expressed her regret for the incident stating that she never intended to hurt anybody's feeling. The evidence which was led, by the petitioner was

brushed aside by the Enquiry Officer mainly on the ground that there was no documentary evidence to prove the presence of Mr. Shyam Khanna on the day of the occurrence. The petitioner was accordingly held guilty of misconduct. The Report concludes:-

> "All other contentions made by the chargesheeted employee in support of her version fail to dilute the charges duly established during the enquiry. Hence, I conclude that the evidence led during the enquiry has conclusively established the charges against the chargesheeted employee and I hold that she had made the unwarranted/derogatory remarks against Shri Raju Lakara as have been detailed in the chargesheet. Hence, the charges leveled against Smt. Kalpana Shravan Khatu stands proved and I hold her guilty of the charges"

A copy of enquiry report was supplied to her. Vide Annexure P-5 the petitioner submitted a detailed representation and specifically pointed out that clauses (k) and (m) of Regulation 3 of the Disciplinary Rules not attracted to the alleged misconduct. She had never used the words imputed to her. She also complained that rather than taking action against the complainant who had insulted her in front of the staff and customers present in the bank and misbehaved with her, she was being treated indifferently. She claimed that being a lady, she was entitled to be treated with dignity. On the evidence of the prosecution, it was pointed out that major contradictions in the nature of the imputed words not having been used by her as, according to the evidence on record there was no consensus as to the purported language used by her. She stated that the enquiry officer had commented about her work and it was not subject matter of the enquiry. More importantly it was submitted that

there was witnesses who were customers of the bank, cited by her, namely, Mr. Ashok Khanna, Mr. Shyam Khanna, and Sunil Tuli who were present at the time of the occurrence, Shri Ashok Khanna was not examined by the Enquiry Officer and she made a detailed complaint to the Management regarding this fact, copy of such complaint being annexed with the representation. She submitted that the evidence of Mr. Shyam Khanna as also the letter which he had written to the Management, had been ignored from consideration and brushed aside without justifiable cause. According to her, enquiry conducted was in grave and flagrant violation of the principles of natural justice. On the presence of Mr. Shyam Khanna, she submitted that he had come to the Bank to deposit a sum of Rs. 1, 56,000/- in the current account of his business concern. She made detailed representation against the report running into 15 pages touching each and every aspect of the matter. The Deputy General Manager vide Annexure P-7 rejected the explanation and in a terse three line order imposed the punishment of reduction to a lower stage in the scale of pay by one stage for a period of one year with cumulative effect. The petitioner thereafter appealed to the General Manager vide Annexure P-8. The appeal has been dismissed by the Appellate Authority vide Annexure P-9. Interestingly, in the appellate order, the grounds raised by the petitioner have not been dealt with. A specific complaint was made by the petitioner vide ground (f) in the grounds of appeal that she was not allowed to examine witnesses in defence. The other points as made in the representations have also been reiterated by her and submitted that they have not been dealt with and further that the order of rejection of her representation shows total non-application of mind. The Appellate

Authority, dismissed the appeal reiterating the fact that the enquiry had been conducted in accordance with law.

Annexure P-11 is a letter addressed by Shri Shyam Khanna, to Divisional Manager, Canara Bank Circle Office, Chandigarh. It states that he had gone to the Bank in Shimla on 11.11.1999 in connection with his over draft account. He was present in the Bank when Raju Lakara, the complainant had an altercation with the petitioner and started using unparliamentary language against her. He states that words used and the action was such that it embarrassed everybody but nobody said anything.

I have heard learned counsel for the parties and have gone through the record. Learned counsel for the petitioner submits that the enquiry being in violation of the principles of natural justice, requires to be quashed and set aside. It is submitted that Mr. Ashok Khanna was present before the Enquiry Officer on 8.8.2000 but he was not examined so much so the Enquiry Officer misbehaved with him. He submits that the act complained of even if established does not constitute misconduct within the meaning of Clause 3 (k) (m). It was also contended that both the disciplinary and the Appellate Authority had acted in violation of the principles enshrined in Article 14 of the Constitution of India by totally ignoring the defence evidence. He submitted that the entire proceedings deserved to be quashed and set aside. The findings being perverse in case the defence evidence was considered, the complexion of the entire case would change.

At the outset it requires to be noticed that in a petition under Article 226 of the Constitution of India, this Court cannot act as a

Court of appeal to interfere with the conclusions of the Disciplinary Authority unless finding is not supported by evidence. Reference in this behalf may be made to **Railway Board, New Delhi vs. Niranjan Singh, AIR 1969 SC 966.** This fundamental law has been reiterated in **State of Andhara Pradesh vs. C.Venkata Rao, AIR 1975 SC 2155** holding that:-

> "The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises it not as an Appellate Court. The findings of fact reached by an inferior court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

Similarly in **Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) and others, AIR 1984 SC 1805** the Hon'ble Supreme Court held that:-

> "17. It is equally well settled that where a quasi judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non application of mind. Viewed from either angle, the conclusion of the enquiry officer as well as of the arbitrator Mr. Kakkar are wholly perverse and hence unsustainable. The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence."

Two other decisions of the Hon'ble Supreme Court may be noticed . In **Indian Oil Corporation Ltd. and another vs. Ashok Kumar Arora (1997) 3 SCC 72.** These principles have been reiterated by the Hon'ble Supreme Court holding that:-

> "20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee. There is a catena of judgments of this Court which had settled the law on this

topic and it is not necessary to refer to all these decisions. Suffice it to refer to a few decisions of this Court on this topic *viz. State of A.P. v. S. Sree Rama Rao, State of A.P. v. Chitra Venkata Rao, Corpn. Of the City of Nagpur v. Ramchandra and Nelson Motis v. Union of India."*

To the similar effect is the judgment of **Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane (2005) 3 SCC 254,** wherein it has been held:-

8. This Court in the case of *State of Haryana & Anr. vs. Rattan Singh { (1977) 2 SCC 491* which is also a case arising out of non-issuance of ticket by a conductor held thus: (SCC pp.491-92)

"In a domestic enquiry all the strict and sophisticated rules of Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal , cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence -- not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by

a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

In the present case , evidence of the inspector is some evidence which has relevance to the charge and the courts below had misdirected themselves in insisting on the evidence of ticketless passengers. Also merely because the statements were not recorded, the order for termination cannot be invalid. In fact, the inspector tried to get their statements but the passengers declined. Further , it was not for the court but the tribunal to assess the evidence of the conductor."

9. From the above it is clear once a domestic tribunal based on evidence comes to a particular conclusion normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of *Rattan Singh (supra)* is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh's (supra) has since been followed by this Court in *Devendra Swamy vs. Karnataka State Road Transport Corporation { (2002) 9 SCC 644}."*

It would thus be clear that although the jurisdiction under Article 226 of the Constitution is circumscribed by well settled

principles, yet this Court is not precluded from exercising its jurisdiction in the circumstances as enumerated in the cases considered above. As I have noticed, the Enquiry Officer as also the Appellate Authority have conveniently ignored the evidence of the defence more especially of Mr. Shyam Khanna on the untenable plea that there was no document which shows his presence. Why the fact in the representation stating specifically that Mr. Khanna had visited the bank to deposit the amount in his over draft account, was not considered is unclear. The only conclusion can be that this was an inconvenient fact established by the petitioner which would have caused embarrassment to the authorities.

This Court while considering the writ petition will not sit as an Appellate Authority to reappreciate the evidence which had been led during the enquiry. But, this would not be an impediment to examine the record to ascertain whether there was a proper consideration of the facts. Two facts are evident; (1) That the Enquiry Officer, without justification did not allow evidence of the one of the witnesses Mr. Ashok Khanna (2); evidence of Mr. Shyam Khann was not considered on the specious assumption that there was no documentary evidence to establish his presence in the Bank. What was the nature of documentary evidence which the Bank was looking for in corroboration of his presence? Can not a customer be present in the Bank without recording his presence on a document? Is it mandatory for the customer to mark his presence or to establish this fact by documents? Surely this is a strange finding given only to avoid the inconvenient conclusion that the petitioner had been insulted and if carried to its logical conclusion, the complainant would face disciplinary action. The Deputy General Manager completely

ignored the reply filed by the petitioner who had pointed out that said Mr. Shyam Khanna was present in the Bank for depositing a sum of Rs. 1,56,000/-. What corroboration was needed is not clear from the record. The detailed reply to the report submitted by the petitioner vide Annexure P-5 has not been considered before imposition of the punishment. The Appellate Authority has simply endorsed a finding without application of mind to say the least. In the circumstances, it is held that findings arrived at by the Enquiry Officer and the manner in which it was dealt with by the Appellate Authority are perverse and show a total lack of application of mind. Sexual harassment and gender discrimination is a serious offence at work places which is to be dealt with sternly. In case of the petitioner, she had complained about the complainant using unparliamentary language against her which fact was corroborated by Shri Shyam Khanna yet no action was taken against him. The only inescapable conclusion would be that the enquiry was against law.

It is by now well settled that the disciplinary enquiry is a quasi judicial proceeding to be conducted in accordance with the principles of natural justice and the Enquiry Officer is duty bound to act judicially. See: **Anil Kumar vs. Presiding Office and others (1985) 3 SCC 378**. In the present case record and the pleadings do not show that such exercise has been undertaken by the respondents.

There is another aspect of the matter which requires to be considered. In **A.L. Kalra vs. The Project and Equipment Corporation of India Ltd., AIR 1984 SC 1361**, the Hon'ble Supreme Court has pronounced on the vagueness of the Conduct Rules prescribing

for misconduct. While considering the appeal of the petitioner therein, the Court while dealing with misconduct of which the petitioner was charged therein held:-

> "21. And now to the facts. The gravamen of the two heads of charges is that the appellant is guilty of misconduct as prescribed in Rule 4 (l) (i) and (iii). It reads as under :
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> "4 (1) Every employee shall at all times :
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> i) maintain absolute integrity;
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> ii). . . . . .
>
> iii) do nothing which is unbecoming of a public servant."
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> Rule 5 prescribes various misconducts for which action can be taken against an employee governed by the rules.
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> 22. Rule 4 bears the heading 'general'. Rule 5 bears the heading 'misconduct'. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope R. 4 into R. 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with

> precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in *Glaxo Laboratories (I.) Ltd. v. Presiding Officer, Labour. Court, Meerut, (1984) 1 SCC 1 : (AIR 1984 SC 505),* where this Court held that 'everything which is required to be prescribed has to be prescribed with precision and, no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty'. Rule 4 styled as 'general' specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of R. 5 which specifies misconduct. It would therefore appear that even if the facts alleged in the two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that R. 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct."

The court concluded that vague generalization cannot be used for imposing punishment for purported misconduct.

Learned counsel for the petitioner submits that Clause 3 (k), (m) under which the petitioner is charged, cannot be invoked in case of the petitioner as the act complained of could not be drunkenness or riotous or disorderly or indecent behaviour in the premises of the bank. He submits that Clause (m) dealing with an act which is prejudicial to the nature of the bank is so wide and vague, every act can be covered under this Clause according to the whim and fancy of the employer. There can be no doubt that the words even if attributed to the petitioner cannot be covered under Clause (3) (k) or (m). It is nobody's case that the petitioner was drunk or had any scuffle in the bank the words "what is prejudicial to the interest of the Bank" is so vague that it can be used to cover any act. Surely, if this Clause was to be invoked why was the evidence of Mr. Shyam Khanna who had written to the bank regarding acts of the complainant, not considered. The charge sheet itself, was vague and the findings arrived at are not based on evidence on the record. They completely excluded the evidence put forth by the defence, which if considered would alter the entire complexion of the case.

In the facts and circumstances of the case, this writ petition is accepted, Annexures P-6, P-7 and P- 9 are quashed and set aside. There shall be no order as to costs.

31st July, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**